THE EFFECTS OF THE PRINCIPLE OF DETERMINISM ON ESTABLISHING CRIMINAL RESPONSIBILITY*

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Conceptual and theoretical foundation

1. Determinism and the establishment of responsibility

The content of responsibility for acts committed against society including those against the penal code as well, is fundamentally defined by the acceptance of the principles of the causal relationship and determinism prevailing also in the field of human behaviour. These basic theses of marxist philosophy may serve as theoretical basis for the administration of justice as well. The reason why all these may serve only and do not actually do can be explained by the fact that the theoretical bases of the administration of justice in present Hungary are not fully in harmony with the principle of determinism. A lot of specialists of criminal sciences shy to apply the determinist principle concerning the administration of justice consistently either believing in indeterminism (rather rare occurance) or misunderstanding the idea of determinism and identifying it with the concept of mechanic determinism (the more frequent case). The question may be yet raised whether in case of accepting the principle of determinism consistently, is there any reason of stating criminal responsibility and whether the denial of the existence of the free will of the individual and the statement of the necessity for committing the crime, does not eliminate the theoretical bases of responsibility and may not acquit the offender from any punishment.

Before giving detailed answer to the questions raised we find it rational to explain what the acceptance of the principle of indeterminism or the concept of the limited free will would represent in the fight against criminality and for the establishment of responsibility.

1. In such cases the search for the causes of crime might be partially or fully superfluous along with criminology as a whole. How could research for the causes of crime have any meaning if we profess that crime is not fully determined by the causes, rather that besides the causes the free will of the individual may also have a role. Accepting this approach we may question whether it may be expected in the course of building up socialism that people could be trained for keeping to the requirements of society to a higher extent as people may behave as they want in the future as well and develop in a way they choose. Depending on the relative free will of the individual, the number of crimes committed may "even-

tually" increase under any favorable conditions, even at the time communism is fully realized.

2. Not only the absolute free will yet the relative one may clearly lead to the conclusion that no laws exist in human behavior interrelating the past with the future, thus the prognosis may loose its meaning. There is no raison d'etre for any prediction either concerning the formation of criminality or the expected behavior of the individual. Neither can we predict the trend of development, so we cannot give any answer to the question why the number of crimes is growing under capitalism and not in a socialist country, why do people commit more crimes in the USA than in our country, unless the answer is that people act as to their liking.

3. In case we do not accept the principle of determinism in the criminal behaviour of people, we have to refute the possibility for crime prevention as our measures applied cannot ensure even under optimal conditions any prevention, as people's will do not fully or partially depend on the phenomens of the external world. Only vengeance and retribution may have any justification as to any punishment, provided the effect of punishment has no interest for the administration of justice.

On the other hand, if we accept the existence of the principle of determinism in criminal behaviour, the research for causes, prevention and prognosis turn to be important. All these may lessen the number of crimes and make it possible to realize the privailing regularities and promote the perfection of the penal system and the administration of justice.

The effort for putting into force the principle of determinism derives from social necessity. The followers of the criminological school called for altering the fundamental principles for establishing responsibility in the course of growing efforts for penal reform in the late 19th and early 20th century. However, the struggle between determinism and indeterminism was settled with a theoretical compromise. The motivation of the First Amendment (1908) of the Penal Code provides for the clear conception of this compromise saying, "in the debate between determinism and indeterminism the draft takes stand for the free will but accepts the restriction that the prevailing social conditions, the phisical, mental and moral stage of the offender may act as determinative factors in the volitional decision. We may conclude that the state has the possibility to influence not only the external behavior but also the formation of the internal moral development of the individual by altering the determinating factors."[1]

This definition of the relative free will or partial determinism can be regarded as dominating among the specialists in criminal sciences at present as well. I do not aim at demonstrating the history of the realization of the two confronting ideologies and their struggle in the administration of justice of the capitalist countries or not even that of capitalist Hungary, as the materialist concept cannot be accepted as a necessity in a country where religion and idealism are raised to the rank of the official ideology. That is why I deal with the efforts only which came into the fore after the liberation of the country, when the marxist and the materialist ideas came to be realized.

The possibility and need for the realization of the determinist concept in the field of liability and in a narrower sense in the field of criminal liability was raised in the early 1960-s. Over this period monographies have been published one after the other by experts in several fields taking a decisive stand for the determination of human behavior and will and making efforts to elaborate the theoretical basis for for liability including criminal liability.[2] Although these authors expound their standpoints in different ways, they agree on regarding the adoption of the determinist concept as possible and necessary.

The following debates and the latest scientific views[3] may lead to the conclusion that the general acceptance of the principle of determinism may come about concerning the establishment of responsibility sooner or later. One of the essential issues of the renewed efforts for a reform of the penal law is aiming at the modification of the theoretical basis for the establishment of responsibility, leading, of course, to the modification of several detailed items. But few accept the opinion expressed in Imre *Békés*' candidate dissertation on the problem of culpability, as to which "the removal of one of the pillers of the dogmatic structure may undermine the whole system and the restauration of the equilibrum may call for the reorganisation of the whole construction."[4] There is no doubt that the consequent application of the principle of determinism would call for an essential modification in the present system of the administration of justice. Yet we have to make a difference between the approval of a theory respectively its acceptance as guiding pronciple and its application respectively the extent of this. Experience shows that theories frequently serve as a guide for the practice as long as no adequate conditions are brought about for their realization. These conditions do not and cannot be brought about over night, yet gradually as a result of the social and techno-scientific or technological progress. Accordingly, another system for establishing responsibility based on modified theoretical bases can be also gradually formed. Yet the acceptance of the principles and their official implementation may come about with the elaboration of a new law. A new penal may include theoretical requirements which are intended to be effectuated but gradually depending on certain conditions. László *Viski* puts it correctly in his doctoral dissertation that the penal law can be elaborated scientifically based on the concept of determinism only. This thesis also includes in a negative form that any penal institution not based on this approach is not scientifically elaborated and its modification respectively alteretion is necessary.

Professor *Eörsi*'s work is the most frequently quoted, approved and criticized among the relevant publications. This may be explained partly by the fact that liability is the central theme of the monography, thus the problem has been subject of profound and comprehensive analysis. On the other hand it represents the "most consequent" determinism. This monography like the rest of the studies on this topic discusses mainly the problem of blameworthyness and punishment, namely the fundamental questions of responsibility from the aspect of the determinist conception.

The principle of determinism cannot be applied in fundamental theoretical questions only, but also in system of punishment, the sentencing, the efficiency of punishment, as well as in after care. In the following parts I shall attempt to depict the possibility for applying the principle of determinism in the fields mentioned above.

2. *The distinction between responsibility and establishing responsibility*

We may consider criminal responsibility as one form of responsibility in general. The clarification of the real meaning of responsibility in general may promote the deeper understanding of the essence of criminal responsibility and the establishment of responsibility. We often speak about responsibility in work and may add to the position of a senior official the word highly responsible. In widest meaning we understand under responsibility a certain obligation, based on which a person is responsible for something or somebody.[5]

We find an unusual definition of responsibility in Endre *Bócz*'s study. As to him responsibility can be regarded as the relationship between the community interested in the act of the individual and the individual himself. *Responsibility is an objective category independent from the individual* deriving form the fact that the individual is a member of the community. This can be attributed to the individual's sociability and the fact that the individual's activity is not selfcentered, rather an element of the cooperation with the fellowmen and as such its aim, reason, meaning and result are all interrelated and may influence the conditions for other people's existence and activity as well as the efficiency of all these. "However, awareness of responsibility is not a precondition of responsibility rather the result of the realization of responsibility.

Accordingly, responsibility is not a category of morals or law, it is rather the interrelation of the community and the individual, deriving from the necessity of cooperation being a fundamental objective feature of human existence."[6]

Bócz is right stating that responsibility expresses the interrelation between the individual and the community but I believe he overemphasizes the role of the community and so the reciprocal character of the relation is lessened. As a matter of fact, the expectations of the community, the society appear in different norms independent from the acting individual in question, but this norms are elements of the external environment determining the individuals behaviour as well as the relation betwen the individual and society. In the course of the activity the individual is getting aware of these norms and a sense for responsibility and a conscious relation to the community develops. So *responsibility is a general and conscious relation from the part of the individual as well, which may be expressed in a positive or a negative form.* We may speak about responsibility in a positive sense[7] in case of a behaviour in conformity with the social requirements and about a negative irresponsible conduct in case this disregards or differs from the norms.

We may find a whole system of norms expressing the expectations of the community in the present society full of complexity. There may be certain norms to the violation of which society responds with blaming the individual only. These are mainly the moral norms. There are, however, norms the violation of which leadas to more grave consequences. The legal norms, such as the norms of labor law, civil law, penal law etc. come under this category. Consequently, we may speak about social, moral and legal responsibility as well as their varying forms (civil law, penal law etc.) and in case of norm violation the establishment of responsibility varies accordingly.

Each society and community prescribes not only the norms, the behaviour to be followed, yet also the sanctions to be imposed in case of violation of the norms, on the other hand merits are rewarded, such as premium, medals and decorations, for the outstanding fulfilment of social expectations. The idea of responsibility includes from one hand the social requirements expressed in different norms, on the other hand the individuals relation to these norms, which may appear in behaviour answering the social requirements, or in a negative form, by irresponsible conduct violating the norms.[8]

From the above we may conclude that we have to make a difference between the notion of responsibility and that of establishing responsibility or the possibility of establishing responsibility. Violating the norms is the bases for establishing responsibility, namely this may come about through irresponsible conduct. Thus *the violation of norms does not lead to the establishment of responsibility, rather to the possibility of this.*

As to the general approach in the relevant legal literature, the neglect of legal obligations is leading to legal responsibility and the individual violating the norms is compelled to bear the sanctions for the misconduct. As an example I should like to mention the view of *Leikina*, representing the standpoint of the majority of soviet criminal lawyers.' 'Responsibility is an obligation of the individual to subject himself to the measures defined by the state in case of violating the social order."[9] We may also find the similar definition in Hungarian literature. So as to professor *Eörsi*, *"The legal responsibility means the possibility of the application of a repressive legal sanction in case of culpable violation of obligations."*[10] The idea is even more clearly formulated in the following sentence, "the group of illegal acts which lead or may lead to liability is called the *violation of obligations."*[11] The difference between responsibility and establishing responsibility vanishes too, if we accept professor *Földvári*'s standpoint. As to him, "responsibility is nothing but the endurance of the consequences of the value judgement about the conduct is question."[12]

Péter *Szilágyi*'s remark concerning the standpoints mentioned above is correct, when saying that responsibility cannot depend on the establishment of responsibility, it does exist quite independently and is not the consequence of a value judgement, even less is responsibility the endurance of certain consequences. It is rather a normative relation involving value judgement as well.[13] Szilágyi also links responsibility to the norm vio-

lation separating it only from establishing responsibility. Quoting his words, "provided the legal responsibility has come about in any form, it cannot be abolished by any future procedural obstacle. Sanctions, as consequences of responsibility are not imposed in all cases. This, however, does not mean the lack of responsibility, only that of certain conditions (legal or phisical ones, such as the lack of the private criminal action or the escape of the accused for establishing responsibility."[14]

It is worth-while quoting András *Szabó*'s words, "in criminal law responsibility always equals the establisment of responsibility, respectively the statement that the conduct may be influenced by imposing force."[15] As to András Szabó responsibility and establishing responsibility are analogous expressions in criminal law.

Doubtlessly, this use of expressions (namely replacing responsibility by the expression "establishing responsibility" or "calling to account") looks back at a long past. Experts of criminal law do not seem to be confused by this, they usually know what the rest wants to express, but in case we want to make the theoretical theses and principles of law clear to the whole population which is a special requirement concerning the penal law, we have to lay stress on the right use of notions. *In case if we identified responsibility with establishing responsibility, people would not carry any responsibility as long as they violated the norms.* People would make declarations about non-existent things by confirming to accept penal responsibility for being aware of the consequences of their deeds. Obviously criminal responsibility exists not only in case people make false statement but also in case of true statements. The false statement makes it possible to establish the responsibility of the offender but dies not bring about responsibility.

Each individual being aware of the existing norms, their sanctions and the possibility of being called to account as a consequence of the violation of norms, disposes of criminal responsibility. Unless it was the case people acting in conformity with the norms and obeying the law would not be responsible, but only those who ignored and violated the norms. Hardly could we state that the majority of people is working without any responsibility. As a matter of fact, the overwhelming majority of the population is working with utmost responsibility and only a minority's activity can be called irresponsible. That is why establishing of responsibility in a negative sense and imposing sanctions is necessitated against them.

In principle we could understand establishing responsibility as a report on a socially useful activity among with appreciation, reward and distinction. In everyday language, however, establishing responsibility is always considered as the consequence of conduct violating the norms. That is why the procedure for asserting responsibility may be interpreted as measures to clarify how responsibility was realized in a concrete conduct and to prove whether this activity actually violated a certain penal norm and if so which one to be imposed out of the many sanctions.

In the following I intend to depict the interrelation between the principle of determinism and establishing criminal responsibility.

3. The theoretical foundations for establishing responsibility

Criminological research having been carried out so for and the realization of regularities in criminality may lead to the conclusion that human behaviour causing serious demage and danger to society is yet prevailing and likely will exist for long. Even in case the number of crimes committed is showing a dropping tendency we yet have to count with criminal acts in the long run. The formation of criminality, like any other phenomenon, is determined by the causes and conditions and the fact that criminogenic prevail will lead to crimes in the future as it did in the past. Accepting determination in the criminal behaviour necessitates the revision of the essence and the aim of establishing responsibility and the eventual modification and rewording of the theoretical theses elaborated so far.

The efforts of professor *Eörsi*, *Földesi* and *Szabó* for explaining the meaning and aim of establishing responsibility and for demonstrating that the scientific administration of justice can be brought about in this was only, launched a favourable process in the theory of penal law. At present more and more criminal lawyers take the stand against indeterminism and try to adjust responsibility to the conception of the full determination of the criminal conduct.[16]

As a matter of fact, the determinist concept meets with wide response. Some call it predeterminism respectively mechanic determinism and they believe, to refute these would undermine the idea of dialectic materialistic determinism. Lajos *Bólyai* Jr. attacked most vigorously the idea of applying the principle of determinism on criminal responsibility. As to him determinism eliminates the basis of responsibility and punishment may becone irrealistic, in case the offender could not have acted in a different way and the commitment of crime was unavoidable.[17]

György *Ádám* e.g. calls *Eörsi*'s determinist standpoint predeterminism and considers it unsuitable for laying down the bases for responsibility.[18] Imre *Békés* also has some reservations concerning connecting the principle of determinism with establishing responsibility. "Man is a part in our present scientific image of the universe, yet the scientific reflection of man remains relatively independent compared to our image of the universe. The image created about man is a social image depicting the individual's social relations and tasks.

According to our conception of the universe man consumes nourishment protein and carbohydrat while as to that about man he or she is having breakfast, lunch and dinner eating meat and cakes. Both images are true yet of different functions.

The lawyer's task is not to separate but to preserve the individual as a complete personality, even in case the scientific image formed is true, namely if the individual and its deeds may be determinated.

The question may arise whether man is but a puppet controlled by fate and all external and internal manifestations are the causative consequences of the structure of personality inherited as well as the decisions brought about by the stimuli of the environment, or is man's fate deter-

mined from the birth to the last decision. The answer to these cannot be given based on science but rather on faith at present. The mechanic determinism attributes an absolute validity to causality the same way the idea of predestination does to the determinating effect of God's knowledge about the future.[19]" Imre Békés does not reject the possibility of the determination in criminal behaviour, but concerning jurists he considers the old modell of man disposing at least of relative free will to be accepted and not the new scientific image of man. It goes without saying that legal in his opinion institutions including the system for establishing responsibility have to be adjusted to the old modell. This idea is even more clearly formulated in the following quotation: "Socialist criminal jurists having the suffisient theoretical knowledge must accept the philosophical thesis about the determination of human thought and have to admit its psychological foundation. However, dogmatic in present socialist criminal law accepts the psychological concept based on the fiction of the free will (inspite of rejecting the existence of the free will itself).[20]" Imre Békés is not alone accepting the concept of responsibility based on the fiction of the free will. Although taking stand for a consistent determinism, Géza *Tokaji* accepts the view formulated by Békés. Demonstrating and reviewing different theories on responsibility he comes to the conclustion, that "responsibility cannot be solely deduced from the determination of past conduct fully excluding the free choice of the individual. We rather have to pay attention to the fact that the full determination of the past deeds is inadequatly reflected in the social consciousness as well as in the consciousness of the individual. That is why people believe in the illusion of the free choice limited but to a certain extent by the determinating factors which could never fully eliminate it. In the some way as the incorrect reflection of one or other trait of reality in the consciousness did not prove always socially harmful during history, the illusion of the relative freedom of choice reflecting full determination inadequatly is likely to play a useful role for a long period of time, since the awareness of responsibility is built on that. However inadequate the foundation of the awareness of responsibility might be, the formation of this awareness creates the grounds in the personality on which the preventive role of the correctly imposed and implemented consequence of the criminal law can have its optimal effect."[21]

The illusion of free choice has also a role in *Viski*'s conception, in laying the foundations of liability. Viski, however does not regard it as the basis for establishing liability. As to him" ..... the illusion of free choice is an illusion only in the sense of philosophy, in the sense of psyhology it is much more similar to reality than to mere delusion."[22] As to Viski's explanation this can be attributed to the fact that according to our present knowledge the totality of the causes cannot be fully known, the chain of causality cannot be followed to the end. "The too far, indirect determinating factors, however, have a role in every action and for this reason the illusion is not unfounded, but the decision owing to the necessary limits of the mental process is a reality of psycho-physiology and

it is an illusion only if the human activity is regarded on the level of abstractness and not on the level of practical life.

On the other hand, and this is the essential thing we do not have to stop on the level of the illusion of the freedom of choice in order to "protect" the notion of responsibility. We have no reason not to look behind the illusion and we do not have to deny that when evaluating the human act we do not find the acting person responsible because he did something else what he should have and could have done out because did what he had to i.e. because he is himself. The society evaluates a human being according to his qualities and his significance to the society."[23]

We are in complete agreement with Viski's opinion that there is really no need for building on illusions instead of reality. It is precisely the realization and admission of the reality that makes the real sense of the establishment of responsibility. The establishment of responsibility cannot have any other basis as the deed and the human being behind it as he is. The measures that are to determinate (or parting determinate) the perpatrator's future behaviour toward the right direction have to fit to that. But it is the same thing – and rightly – on the opposite side, in the scope of responsible acts. By recognizing and rewarding in the scope of evaluating the behaviour that is useful for the society and also determinated, the society strives for making this type of conduct more frequent or permanent.

But let us see some basic arguments against the recognition of the principle of determination on the field of the establishment of criminal responsibility. The dominating conception is probably formulated by Tibor *Lukács* in his study entitled "The formation of Our Concept of Criminal Law", when speaking against the theoretical correctness of the relatively indeterminate loss of freedom sentence." The basis of this idea, which dispenses of all our principles concerning the criminal act, culpability and punishment, is seen in the thesis that the human behaviour is determinated, while our present system of punishment is based on the ideas of the freedom of action, the freedom of free will. I must remark that our present system of punishment takes the ideas of marxism into consideration, only it takes the standpoint of the relative freedom of will. This is the reason why the institution of the bars of punishability are developed."[24]

The system of punishment, the establishment of criminal responsibility, according to *Lukács* is built on the principles "of the relative freedom of will", though the ideas of marxism are taken into consideration, too, the determination of the behaviour, however, is an alias thing, it is contradictory to the principles of the socialist penal law.

Bólya, Jr. has similar views concerning the impossibility of the reconciliation of the establishment of criminal responsibility and the principle of determinism, "..... we do not find the foundations of responsibility in determinism. While proving that we do not attempt to refute the thesis of determinism, since on the one hand it is problem of philosophy, and on the other hand we do not want to attack the thesis, we merely state that *determinism and responsibility are phenomena having their effects*

in two different sphere and one of them cannot be derivated from the other." "Accepting determinism we regard it as general, *a law that has is valid everywhere and in everything*, it is necessary as air, it is present everywhere but unnoticed, it is an objective fact, but it is not manifest in institutions and it does not serve as basis to derivate thesises from it."[25]

The study of Bólya, even only the quotes convey the impression that the principle of determinism as a philosophical thesis may be true but it cannot be put into effect in the sphere of liability in spite of the fact that it is a "law that valid everywhere." According to Bólya, these concepts have nothing to do with each other. We find them "on different levels of the system of build-up and as liability is not defined by determinism, *determinism is not defined by liability.*"[26] According to him, determinism should remain a thesis of philosophy and we should not try to put it into reality, in institutions or use it to derivate new theses or *in concreto* apply it in the field of establishing criminal responsibility or responsibility in general, because in that case we necessarily have to give up either liability or determinism.[27]

The main accusation against establishing responsibility on the basis of the principle of determinism is that the subjective elements are not and cannot be taken into consideration, because from the point of view of determinism it is indifferent how the criminal act was "born" "since it is determinated", the important thing is that a harmful result is produced. And, the punishment is not applied because the perpetrator is guilty but for the future prevention.

In my opinion the misinterpretation of the determinist liability is the most evident here. From the pattern of cusality it is clear that the culpable human behaviour is the result of the struggle of the conflicting motives, it is the manifestation of the perpetrator's wrong, harmful views, emotions, perhaps psychical attitudes. The fact itself that the penal norm has been violated is not enough for the evaluation of behaviour violating the norm. On the basis of that the right preventive measures, the determinates that would have advantageous effects in the future cannot be decided. Clarifying the ways of the determination and answering the question of "how" that is asked by Bólya and others, is an absolute need to make it possible. The subjective and objective causes that produced the guilty behaviour have to be explored. It is precisely the characteristics of the perpetrator subject, the state of his consciousness, the psychical process of the volitional decision, the evaluation of the anticipated images connected to the displayed behaviour that are the basis which makes possible to decide whether it is a penal sanction that is fit the best to influence the behaviour of the perpetrator and other members of the society or other means, measures are more suitable for that.

To establish responsibility is not possible without establishing whether the perpetrator's conduct violating the penal norm was reflected by his consciousness or not, and if it was, how was it a purpouseful act, or a faulty conduct of the perpetrator produced the harmful result. The examination the perpetrator's awareness of responsibility is also indispen-

sable. We agree with *Tokaji* that "awakening the consciousness creates the foundations in the personality on which the preventive role of the correctly imposed and executed consequences of penal law can have optimal effects," but do not share the opinion according to which the awareness of responsibility is based on the illusion of the freedom of choice reflecting the complete determination inadequately. In my opinion the awareness of responsibility cannot be derived from the illusion of the freedom of choice but from the correct or less correct reflection of the reality *surrounding us. The awareness of responsibility means that the individual becomes conscious of the existence of social evaluation of the relationship toward them, i.e. that obedience to the norms entails recognition, their violation entails legal detriment.* This obligation of giving account that exists for everyone means the psycho-social basis of the awareness of responsibility.

The awareness or sense of responsibility of course is not an inherited trait as stated by certain western authors.[28] The awareness of responsibility develops during the ontogenetic evolution of the human being as a result of the environmental effects. Legal norms in general and the norms of penal law together with their consequences as the parts of the material world are reflected by human consciousness, and the awareness of responsibility developing that way becomes an element of the personality, the consciousness of the human being.

The process of developing into a social being, into a subject of social obligations and rights, starts with the first moment of the individual life of the human being. A person gains certain knowledge in his childhood and learns certain norms that have effects in the community surrounding him, in a wider sense in the whole society. His behaviour is evaluated from the point of view of moral responsibility. That way the awareness of moral responsibility develops in him and it becomes a charasteristic of his personality. The awareness of moral responsibility, however couples with the awareness of legal responsibility since direct and indirect informations show the existence of norms the violation of which may entail grave counsequences, legal detriment.

Woundering the results of pedagogical and other sciences dealing with human behaviour, legislation regards 14 years as the age when the awareness of responsibility is developed and it can be considered as an active factor of forming behaviour.

The awareness of criminal responsibility becomes a part of the personality in a different way with different people. With some people the due respect toward penal norms does not develop at all or precisely a negative value-judgement of them develops.

Concerning such persons, if, depending on enwiromental effects and conditions, they break the norms of criminal law, establishing criminal responsibility has the task of forming or evoke the consciousness of responsibility at least to the extent that in the conflict of motivation the motives of duty should win against criminogenic ones and a volitional decision to follow the law should be born. We emphasize again that the establisment of criminal responsibility may have a favourable only on the personality of

the perpetrator but also can strengthten or create the consciousness of responsibility in the individuals and that way it can be a determinant of lawabiding behaviour. The establishment of criminal responsibility therefore, by its consciousness-forming effects, is fit to promote the obedience to norms reflecting the interests of the ruling class, that of the society.

Although the establishment of criminal responsibility effects the consciousness and the personality, those personality traits are examined primarily that have been manifested in the criminal behaviour. These unfavourable personality elements must be first of all corrected by calling to account. A different preventive measure has to be employed if the perpetrator purpousfully performed his act or he only disregarde the requirements of diligence. Again a different measure is needed if the criminal act is an incidental one, not the regular display of the personality or if it is a case of a hardened, habitual criminal.

The accusation, therefore, that the establisment of criminal responsibility base on a determinist conception does not take into consideration the perpetrator's subjective charasteristics and that way it aims the introduction of the strict liability system is unfounded.

Viski is perfectly right stating that the determinist conception does not compel us to give up the notions of responsibility, blameworthyness and culpability, on the contrary only it is fit to give the scientific explanation of these notions.[29] It is true, of course, that they gain a different meaning if they are related to the principle of determinism and not to that of the free will. That way a person's behaviour infringing a norm of criminal law does not qualify as a criminal offence because he had a free will to choose between a lawabiding and a normbreaking behaviour and displayed the latter and is, therefore guilty, but because the goals of prevention can beattained by the penal sanction for the act harmful to socety that was displayed determinately, precisely because of the perpetrator's subjective traits.

In fact, it is connecting the past with the future in the establishment of responsibility that means the superiority of the administration of criminal justice as compared to that type of criminal justice, that type of calling to account, which uses only or primarily the past as a basis and imposes the punishment according to only the "weight of the act" and the "degree of guilt" independently from the future preventive goals. The establishment of responsibility if it is scientifically found, cannot be content with sentencing the perpetrator according to decennial or perhaps century old customs not paying due attention to the question, what happens to the convict, whether the sentence is fit to change the consciousness of the perpetrator into the right direction or not. The opposers of the determinist conception well realize, that it is the problem of connecting the past and future, or in other words, etiological examination and prognosis have here a basic role, and they object to what they recognise. In our conception it is not a shortcoming of calling to account on the principle of determinism but precisely a credit to it. Prognostication using the result of etiological research means the method with the help of which the preventive aims of punishment can be ensured.

Several authors do not want to endorse consistently the principle of determinism in the sphere of the establishment of criminal responsibility bacause they see the moral basis of liability endangered by it. According to *Földvári*, for example, if the behaviour is completely determinated, the moral basis of liability must be rejected. In that case punishment could be regarded as an expedient determinating factor but not as a means of social disapproval.[30] It is incomprehensible a criminal conduct, a behaviour that is harmful to the society to a great extent should not be also morally disapproved if the perpetrator displayed it determinated by his own personality and by objective factors and not on the basis of his free will. Especialy so, since the basis of both penal norms and sanctions is the disapproval of the acts that are harmful or dangerous to the society or to the ruling class. Moral norms contain social expectations and requirements as it is the case with penal norms, only their level is different. Sanctions (disapproval, reprimand) are applied against those infringing moral norms the same way as against the violators of penal norms, only the sanctions are different. Of course there are other differences, too, because moral norms may be divergent even within the same country, but the penal norms usually are the same. It can happen that a penal norm is not approved of agreed upon by a significant part of the population, but is such case no kind of punishment is approved by this part should it be imposed either with an aim of retribution or prevention. Thus, the moral approval of a punishment primarily depends on the approval of the penal norm.

The approval and observance of the dominating moral norms of a given society necessarily means the approval and observance of the great majority of the penal norms since the infringement of penal norms represents a much greater harm and danger to society than that of moral ones. The principle of determinism comes into display in the case of the violators of moral norms the same way as it is with the perpetrators of criminal offences. Moral impeachment has preventive aims the same way as calling to account under criminal law or any other forms of impeachment do. Stigmatization, vengence, the restoration of "moral justice" cannot be the aim of moral conviction either. Laying the moral foundation the establishment of criminal responsibility requires "only" that the dominating moral norms and penal ones should be in accordance, penal norms should express the interest of the society and the members of the society should recognize such contents of the norms.

In connection with the moral foundation of the establishment of responsibility, we have to touch upon the opinion that *Földesi* discussed in his mentioned monography. Answering Heller's question, whether it is right and just to call people to account if their will is completely determinated. Földesi says: "From the point of view of the doctrine according to which the will is completely determinated, penal law is unjust to a certain extent when punishing intentional or negligent perpetrators, since their will is also completely determinated and they could not act otherwise than they actually did."[31]

Földesi deems this unjustness a necessity at the present stage of our

social development the same way as the system of sharing according to work. „While in the case of sharing according to work the equal law applied to inequals leads to inequality, here the inequal law (some are punished, others are not) applied to equals (everybody's will is determined) creates inequality."[32]

In my opinion *Földesi* made here a mistake concerning the difference in levels, for the punishment or the bonus is not the consequence of the determination of the behaviour but of the quality of determination. Devoted and succesful work is as much determinated as the robbery committed by a multiple recidivist. It can come to calling to account if the determination of the behaviour is manifest in a negative, harmful result. Even "unjustness to a certain extent" is out of question, since what is employed in the interest of the protection of the overwhelming majority, the society, cannot be unjust. A concrete norm of penal law or a given judicial decision or certain way of the execution of punishment can contain unjustness, but the institution of the establisment of criminal responsibility is socially useful and just and it is a fundamental means of social coexistence and the forming of consciousness.

While the system of the establishment of responsibility based on the determinist conception is accused on the one hand of being a system of strict liability, on the other hand the representatives of this view are attributed to with immense "subjectivism". Bólya refers to the fact that admitting the aims of aducation may lead penal law to the quicksand of the school of social defense, since "the basis of liability is the necessity of the punishment, the aim of changing the perpetrator. This aim defines the means and it puts down the foundation of liability. Thus, everything is made to serve the acheivement of this aim. And since liability in this conception – as it was outlined – *is not able* to achieve this aim in every case, other means are needed.

Culpability will be exercised from criminal liability, the next step will be the abandonment of criminal law, because if it is not able to acheive the set goal, it is not needed."[33]

It is true that the representatives of the determinist conception do not want to take into consideration only culpability (intention and negligence) but also blameworthyness which has a much wider meaning,[34] or recently psychical attitude.[35] or, from a criminological point of view, the process of causality leading to the criminal offence, the network of chains of cause and effect and the future possibilities of the appropriate means. No one wants, however, to abandon criminal law, the aim only is its modernization, its adaptation to the newly recognized laws. The leading ideology of our times and our society is dialectic and historical materialism. The materialist view penetrates criminal sciences and also the theory of criminal liability and it drives the remains of idealistic bourgeois views and institutions out of them.

As it can be seen, in the process of calling to account the determinist view attributes a great significance to the subject of the perpetrator to his psychical relation toward the penal norms and toward the harmful or dan-

gerous consequences to society. Punishment may be imposed only if the future behaviour can be determinated to the better by the punishment. From all this logically follows that not all acts violating a penal norm may be followed by a punishment or by a penal measure but only those the prevention of which seems feasible only by imposing a sentence. The differentation, the choice of the sanction applied for the violation of the norm can be decided in addition to the type of the violation of the norm, primarily by the state of the perpetrator's personality, the contents of his consciousness. In the case of some acts violating penal norms, criminal responsibility is not established e.g. acts by children that violate penal norms. There are some acts for which no sanction is applied, on the contrary, they are awarded with a decoration or other tribute of respect, e.g. in certain cases of emergency, when a great harm can be avoided by causing a smaller one. Under the title of "circumstances excluding punishability" the Hungarian Penal Code enumerates the cases when an act violating a penal norm does not qualify as a criminal offence, i.e. when the establishment of criminal responsibility, or more correctly, the imposition of a punishment is excluded.

The aim and principles of punishment

1. The aim of punishment

The establishment of criminal responsibility, as we have seen, is to serve the interest of the society. The basis is the realization that the prevention of human behaviour particularly harmful or dangerous to society can be advanced by calling to account and within this, punishment, due to its fitness to influence favourably the consciousness of people, is a useful, expedient meens of the society.

The opinion, according to which it is in the interest of crime prevention that punishment should be employed, became generally known at the and of the last century, when criminology came into existence. It was the doctrine professing that criminality has its own laws and is determinated that started the debate which still is going on concerning the definition of the aim of punishment. The determinism of criminology and the indeterminist classical view of criminal law and penal codes based to a significant extent on the latter, confront each other. I do not consider my task to give a detailed historical retrospect of the debate and the different notions (from vengance to education) apearing in it. All this can be found in most of the monographies dealing with the subject.[36] I attempt only to introduce the present state of the debate and legal regulation, naturally, stating my own position as well.

a) *Retribution and prevention*

It is a basic trait of the penal law of the socialist countries that their task is the protection of the socialist social order and their theoretical ba-

sis is Marxism – Leninism. In the formulation of the aims of punisment it is generally manifest, although the terminology of the different codes is different.

As to the formulation of the aims of punishment, the codes of the socialist countries can be divided into two groups. There are some, that define the aims punishment as exclusively prevention,the re-education of perpetrators and general prevention, and there are others, that, in addition to prevention, enumerate retribution as well among the aims. The examples of the former are the codes of Bulgaria and the GDR[37] of the latter the Soviet[38] and the Hungarian Penal Code.

In the Soviet Union, at the present, in both the literature and the interpretation of the Supreme Court the opinion that the aim of the punishment cannot be retribution, but only prevention, is clear.[39]

As far as Hungary is concerned, there are still significant differences in the interpretation of punishment, although the new Penal Code unambiguously took a stand for prevention. In spite of that, it is not without interest to survey the opinions that preceded the present view that becomes step by step the dominating one.

According to Art. 34. of the Penal Code of 1961 "The aim of punishment is: in order to protect the society to apply a legal detriment as defined by law, to improve the perpetrator and to prevent the members of the society of criminality."[40]

The interpretation of the rule by experts is not uniform, although the Motivations for the draft makes the intentions of the drafters clear. "The socialist state must use this means (criminal punishment J.V.) a way that the punishment should ensure not only the effectivity and power of retribution but should fit to the aim of education should be in accordance with the requirements of socialist humanity." Or, in another place: "If the main aim of punishment, in addition to retribution, is improvement as well ..."[41] On the other hand, the Commentary of the Penal Code does not regard the application of legal detriment as an aim of punishment and deems this interpretation selfevident, stating, that the socialist scholars of penal law agree with it almost without exeption.[42]

My own interpretation is, in accordance with the Motivations of the drafters, that the Code sets a double aim for the punishment: the application of legal detriment i.e. retribution and prevention, i.e. restraining the perpetrator and other citizens from committing criminal offences. And this regulation cannot be qualified as inaccurate formulation, it is precisely an accurate reflection the experts' and legisrators' view of that time. The fact, that even nowadays there is no uniform opinion about the aim of punishment, speaks for this statement.

As it will be seen, there are some authors, who approve of the definition of the Code and in addition to prevention, regard retribution as the aim of punishment as well, while others profess that only prevention is the aim of punishment and demand the change of the wording and the abolishment of retribution as an aim. We should, therefore, examine

whether the legal formulation of the aims of punishment and all the measures that are taken on the basis of the Code in order to reach the aims, are in harmony with the determinist conception recognized by everyone at least in words, or not.

The experts who profess the so-called consistent determinism naturally regard punishment as a measure to be taken for a behaviour in the past, a measure which is fit to shape favourably the consciousness of the perpetrator and other individuals and that way to prevent criminal offences. Naming prevention as the aim of punishment, therefore, is a direct consequence of the determinist conception, while retribution necessarily follows from indeterminism, from the conception of free will. Historical evolution also proves that the idea of prevention comes to the fore and is put in the body of law even if merely as an additional aim, to the same extent as the determinist conception gains recognition. The idea of retribution is in complete harmony with the belief in God. Pope Pius XII. e.g. on the Rome Congress 1953 of the International Association of Penal Law (AIDP) emphasized in his adress the function of retribution and atonement of the punishment.[43]

The present formulation in the Hungarian Code is the projection of the relative free will conception, i.e. in addition to the idea of prevention and education, retribution also has a position, since, according to this view, human behaviour is not fully only moderately determinated.

The authors of the book entitled "The general doctrines of penal law" attribute a double function to punishment: a repressive and educative one. They identify the repressive function with the repressive aim which they evaluate of all in the case of graver offences. The perpetrator is isolated from the society for a shorter or longer period of time and his harmful influence effecting the society, is limited this way. At the same time, the element of general prevention exists in such penalties even to the extent that they, by the gravity of the imposed sanction, keep other people back from committing offences.

It means, that the punishment defined for the grave criminal offences and the one actually imposed should be fit to achieve the aims of repression. For this aim primarily the long term penalties are available in the system of punishment. Repression is a necessary and indispensable element of the punishment but it has no dominating function."[44]

According to the authors, the repressive aim of the punishment comes to the fore in the case of the perpetrators of grave criminal offences, mainly by not letting them to pursue their criminal activity during the long term loss of freedom. It can be also interpreted as keeping the dangerous criminals away from the society for a defined period of time in order to prevent the perpetration of a crime during this period. Not a word is spoken, however, about the re-education of these perpetrators. "The educative special preventive element of the punishment comes to the fore particularly in the case of short-term or suspended punishment, in the case of corrective-educational work and fine. It does not mean, of course, that

long-term loss of feedom, which primarily serves the aim of repression on the long run, would not serve the special preventive aim of punishment."[45]

From all this one may conclude that repression or retribution can be used against the perpetrators of grave offences, while education is applicable to the perpetrators of less grave offences and mainly to those having committed crimes the first time. A similar principle or the retributive character of the punishment is expressed in the division of the punitive measures applicable to juvenile perpetrators into the groups of measures and penalties. According to the Code, a punishment can be employed against a juvenile only if the educative measures and punishment in such a way emphasizes the retributiv character of punishments doubtlessly. (It will be discussed in detail in the following parts.)

We do not need, however, infer the opinions professing the retributive character of the punishment, since we can find them in a completely unambiguous form. "The thesis is undeniably right, according to which the punishment has a double aim. On the one hand it is the application of a legal detriment, i.e. retribution, on the other hand, but not secondly, it is education, i.e. general and special prevention." – writes Dénes Bagi in one of his studies.[46]

The opinion József Földvári concerning the retributive aim of the punishment is inconsistent. He denies and at the same time does not deny the retributive character of the punishment. "While we exclude retribution from the aims to be achieved by the punishment, we admit that punishment means retribution in a certain sense and the perpetrator, and also the other members of the society, understand it as such. Punishment is retribution in the sense that it is imposed for a criminal offence committed previously. It is for the perpetration of the offence that the perpetrator has to suffer a smaller or greater detriment. Depending on the degree of the detriment the retributive character of the punishment is weaker or stronger. We would not deny the retributive character except for such measures that would be applied not for a previously committed offence but e.g. for a future behaviour. Such a measure, however, could not be regarded as a punishment because, as it will be seen later, it is a part of the notion of the punishment that it is applicable only for a previously committed criminal act. The retributive character, therefore, consists in the act being followed by the punishment, the detriment caused by the perpetrator being returned by the state with another detriment.

Thus, retribution in this sense is a part of the criminal punishment. It is not an aim of punishment even in this sense. It is, however, the aim of the state that a punishment should follow the perpetration of the criminal offence in every case, that no crime should remain unpunished without retribution. It is necessary if or nothing else but the members of the society require it. Every criminal act creates shock, disapproval perhaps indignation in a smaller or bigger part of the population. Punishment is necessary even in order to calm that and it is one of its aims. Putting together all this, we can say that the *state can set it as an aim that all criminal*

acts should be retributed by applying punishment in order to satisfy such demands of the society."[47]

Földvári regards retribution primarily as the essence of the punishment and according to him retributive character is expressed in the extent of the punishment or its rigour. In other words, he identifies retribution with legal detriment which is a necessary element of the punishment. At the end, however, taking into account the demand of the members of the society for retribution, he sets as an aim of the state that all criminal acts should be retributed. Since the establishment of responsibility is a measure of the state, retribution here becomes an aim of calling to account realized in the punishment. The thoughts of Földvári in which he says that "we would not deny the retributive character except for such measures that would be applied not for a previously committed offence but e.g. for a future behaviour" are also remarkable. *Földvári*, however, does not relate the punishment with the perpetrator's future behaviour, in this opinion the punishment is employed only for the criminal act of the past. In my opinion precisely this is the essential thing. It is a mistaken assumption that the retributive character can be denied only if the punishment is applied not for a *previously committed* offence but taking into account the expectable future behaviour. *Földvári* correctly recognizes the connection of the punishment without retribution and *future* behaviour, but he is not right in denying the connection of the *past* offence and the punishment without retribution. According to the determinist conneption, the punishment without retribution is employed precisely for the culpable behaviour in the past, in order to prevent future culpable behaviour. It is precisely this that means the reasonable and useful aim that calling to account the perpetrator of an offence is employed for. Consideration *only of the past* or *only of the future* in connection with the punishment cannot be identified with the determinist conception.

The connection of the punishment with the past and future is formulated also in *András Szabó's* work quoted before. "The social function of criminal liability is not retribution but prevention. If the means – causing detriment – is regarded as an aim, if the element of coercion is examined isolately, then punishment is only retribution indeed and as such, regards only the past. Consequently, its educative role as a role looking into the future could not be spoken of. The aim of punishment is defined by the social function of criminal liability and it is prevention, the future determination of the behaviour, according to the requirements of penal law."[48]

Considering also the demands of the population for retribution *Viski*, too, deems necessary the recognition of retribution as an aim of punishment. "We can say that the opinion according to which the punishment has no retributive aim is generally accepted." "It is doubtless, however, that admitting retribution as an aim of punishment has certain advantages, too." This advantage is manifest in the fact that the punishment has to serve the restoration of public peace, the satisfaction of the existing demands of the society for punishment in such a way, however, that at the

same time "this historically preconditioned demand should change to the right direction."[49]

It is a fact that the notion of justice in the consciousness of the majority of people still is connected to the punishment proportional to the deed, approximatively to the principle of *talion*. It is natural, since even the great majority of the experts participating day by day in calling to account does not admit or accept the views concerning the determination of the behaviour and consequences of these views. In my opinion, however, the legal definition of the aim of punishment should follow the recognized laws of science and not the wrong ideas of the masses. The punishment employed with an aim of prevention can satisfy as well or better the demands of the population for the punishment as the retributive one if people are taught the basic laws of human behaviour. Mihály *Ficsor* correctly writes in one of his studies dealing with the aim of punishment: "*It is not the same at all that we recognize the view right in principle but take into consideration the practical abstacles existing for a shorter or longer time, or, on the basis of pragmatist considerations, we accept the situation existing due to the practical obstacles, as right in principle. In the first case we can strive to clear away the obstacles and after that to find the solution that is right in principle, in the latter case this perspective is lost.*"[50]

It is not only that the legislation should put the reality into a formulation but also that it should look ahead.

A legislative act with its theses and system of requirements, points out the directions for human behaviour. And if it is possible at all, it is particularly possible in formulating the aims, since the set aim necessarily is the anticipated norm of the future satisfaction of the present need and as such, it is the guideline for action. That way the preventive aim of punishment becomes an inspirer of the socially useful activity, while retribution means only a show-down, settling the account, without the perspective of future advantages. *Shargorodsky* writes it rightly in this monography published recently: "Retribution as an aim ultimately is nothing else but a modern form of the primitive vengence. As long as any form of taking vengence can be found in the punishment, we cannot rationally dominate the administration of criminal justice."[51]

It can be read frequently even in the works of socialist scholars that the aim of punishment is the just compensation.[52] The punishment however does not compensate anyone, neither the injured party nor the society. It is so not only because compensation very frequently is impossible (e.g. killing) but because the kinds of punishment are not fit to compensate even if the character of the caused harm would make it possible. The present system of punishment is based on the loss of freedom penalty, thus it is not suitable for compensation and even fine does not serve such an aim.

There is a similar view when the restoration of the violated legal order is named as the aim of the punishment. In the Hungarian litetature such opinion also can be found. E.g. according to *Viski* "in addition to special and general prevention we cannot disregard the aim of the applica-

tion of punishment that it should restore the violated legal order, *retribute* the attack against it."[53] We could take the view of János *Székely*, too: "retribution originates from the age of private vengence. In Sicily, etc. it can be found in its ancient form as vendetta or blood feud. In the system of the punitive monopoly of the state, however, the retributive role of the punishment has been modified on the one hand, and on the other hand it had to share its monopoly as the sole aim of punishment with other aims: with general and special prevention and the improvement of the perpetrator.

In retribution the element of granting satisfaction to the injured party faded away by now. It is more the satisfaction of the violated sense of justice of the society and balancing the loss of respect caused to the state by violating the prohibitions prescribed by penal law (in the case of intentional offences) that adds the shade of retribution to the punishment of the present days. This seemingly self-contained protection of respect, however, has its own strictly rational bases as well."[54]

This standpoint and the similar ones reflects a law-centric attitude, there is a legal order which is good, just and indisputable and if someone violates it, we employ a punishment against him and the attack against the legal order is duely retributed. It is nothing else but the reflection of the ideas of the school of positive law which was prevailing at the end of the last century. Just for the sake of comparison I quote the words of *Károly Edvi Illés* from that time: "From the point of view of positive law punishment is the external *malum* that the law prescribes to the perpetrator of an act to be punished in order to justly retribute it and in the interest of the legal order of the state. Accordingly, the precondition of the punishment is the *punishable act (nulla poena sine crimine)*, the *basis* of it is *the law* and the judicial decision based on that, *the aim* of it is the just *retribution* and the *restoration of the* violated *legal order*."[55]

b) *The means of prevention*

If we accept, that it is only preventive aims that the punishment may have, or formulating in a more general way, retribution may not be the aim of the punishment, which in my opinion logically follows from the principle of determinism, our next task is to examine what means can ensure the acheivent of the aim.

Prevention as the aim of punishment includes on the one hand general prevention, i.e. keeping the citizens from committing criminal offences, and on the other hand special prevention, i.e. keeping the perpetrator from committing a new crime. These requirements define the applicable means and the choice of means.

The preventive aim of the punishment can be ensured by means that are fit to prevent behaviour that serve the satisfaction of some kind of need of the individual and are harmful or dangerous to society. It is evident that the education the individual to comply with the social norms, to train people to follow the law is not the task primarily of criminal

law but of education in the widest sense, it is the task of the educative influence of the family, school, the place of work, friends, mass-media. From the point of view of special prevention, calling to account under penal law may have a role if the mentioned means of education did not ensure the observance the social requirements manifested in the penal norms. The general preventive effect of the punishment may prevent morally instable individuals from violating social requirements if their violation entails detrimental consequences limiting the satisfaction of their needs to the extent that the satisfaction that might be ensured by violating the penal norms is compensated. Therefore, it is primarily of consequences representing a detriment *(malum)* that general preventive effect can be expected. For this reason, *malum* is a necessary element of any kind of criminal punishment and belongs to its essence.

The essence also of special prevention is restrain, but as far as the means are concerned, in addition to the legal detriment, other means which are not detrimental to the perpetrator also may play a significant ocassionally decisive role. Restraining the perpetrator from committing a new offence can be helped to a great extent by causing a detriment which ensures general prevention and by the memories of this detriment. However, according to criminological studies, forming the consciousness by positive contents, making the perpetrator understand that the observance of social norms is also his own interest and to satisfy the individual needs it is a more certain way on the long run to follow the norms of penal law, is more satisfactory from the point of view of result. This realization resulted in the fact that education, improving the perpetrator is employed by most of the Penal Codes as means of punishment, especially in respect of juveniles.

In this line of reasoning education does not appear as the aim of the punishment but as the means of prevention. I fully agree with *Shargorodsky*, according to whom education can be only a means, a secondary aim at most, of the fundamental aim of the punishment, i.e. prevention.[56] *Karpets* sharply criticizes *Shargorodsky*, stating thet punishment can have more than one aim, e.g. the protection of society, education, retribution, etc.[57]

Keeping the dialectic relation of the aim and the means in mind, namely that every aim is the means of another one and every means is the aim of an activity, we have to conclude that the establishment of criminal responsibility and the essence of that, namely the application of a sanction, are to serve the protection of the society, they are the means of that (a different of the protection of the society e.g. the army). And the end of these means is the prevention of crimes which can be ensured by applying a legal detriment, by the education of the perpetrator as a means fit to do so. Education as a basic specific aim appears as the aim of the execution of the punishment. The realization of the educational aims on the other hand is ensured by the means employed during the execution of the punishment (work, instruction, different kinds of occupation).

As education cannot be regarded as the specific aim of punishment so cannot the legal detriment. In the hierarchy of ends and means it is prevention that is on the same level as the punishment, for this is the most extensive, consequently the most specific task of the establishment of responsibility. It is similar to the chain of causality discussed earlier. In the long. chain-like line of causes and effects we study the section where the criminal offence is the effect and try to find the factors that produced this effect being its causes and conditions. The same has to be done in the case of punishment. It is not from the point of view of the protection of the society nor of the implementation of punishment but *from the position of the punitive measures that we study the aim to be achieved, and it in my opinion cannot be anything else but the prevention of crime.*

When we examine the aim of the punishment the question frequently arises what the relation of deterrence, restrain and education, general and special prevention with each other is. First of all, I should like to point out that we have two different questions here.

In the past century torture, corporal punishment, the employment of methods causing physical pain to the convicts, were abolished step by step. Thus the preventive effectivity of the punishment was limited mainly to the moral denouncement entailed by the punishment, to the loss of freedom and to causing material and existential detriment. In the international literature one can easily find data showing that it is not as much the punishment or its quality itself that has a general preventive effect as the certainity of being called to account, the certainity of the state and moral disapproval of the recognized norm-violating behaviour.

Nigel *Walker*, the well-known English criminologist publishes data in one of his works[58], according to which 49% of the group of the juveniles asked referred to the opinion of the family, 22% to the loss of their jobs 12% the same attached to being tried at court, 10% the punishment to be given as the most important source of fear in case being cought. The opinion formulated in M. *Ancel*'s work entitled. The New Social Defence is similar to these data[59]. Also according to Ancel not the punishment itself but "the possibility of starting a penal procedure, and its automatic starting itself" is the basic with-holding force. We may also refer here to the statement of *Lenin* with similar content or to our own experiences. We may drew the conclusion from all this that the development from crude's kinds of punishment in the direction of punishments with educational content can be said to be right, it is in harmony with the laws of human behaviour, the development of social consciousness. So we do not need red-hot iron and punishing methods of that kind but such types that have an impact on the consciousness of the person beside the legal detriment i.e. they urge the convict to recognize penal norms and the relationship of the society and the individual.

But *malum* as a means of the prevention of crimes and as withholding force not only has a role in general prevention but also from the point of view of special prevention. The legal detriment applied as punishment, the limitation of the supply of needs may inspire the convict

to abide by the law. General prevention does not demand the application of methods involving pain and the offending of human dignity and the requirements of special prevention do not need it all the more. The transformation of the perpetrator into a law-abiding citizen is possible first and foremost with pedagogical methods selected on the basis of the state of the personality. There are some for whom warning, the deeper acknowledgement of the harmful social effects of the behaviour is enough, and also there are such persons who need long forced education. It may occur that special prevention does not require any penal measures the application of any legal detriment already at the time of the establishment of the criminal responsibility as the necessary changes in the personality of the perpetrator have already taken place. In such cases the interests of special and general prevention "clash". The opinion of the specialists differs as to which preventive interest should be given priority. *Viski* e.g. is of the opinion that the interest of general prevention should be limitted by the interest of special prevention. This opinion is right in as much as special prevention can limit the interest of general prevention, but in my opinion the basis must be general prevension the carying out of the establishment of criminal responsibility and the application of some – may be minimal – legal detriment anyway, because this is the basis of the establishment and existence of the consciousness of legal responsibility. So it may occur that a punishment is implied only for general preventive reasons but there is no such case when punishment is implied only for reasons of special prevention. It is clear from this opinion that the perpetrator cannot be viewed only as himself – a single person – but only as a member of a collective, the society and punishment is applied because of the negative relationship to this collective.

It is a further point whether the legal detriment imposed can be considered to be a means of education. If we set out from the principles of general pedagogy we can say it can. As among the means of pedagogy we can also find discipline detriment, i.e. pedagogical punishment for unwanted behaviour beside fraise and recognition i.e. reward for good behaviour, useful action. The aim of these pedagogical measures is the formation of the consciousness and the personality of the young generation in the right direction. In adult age when intentional educational activity is much less strong or non-existent at all, the role of pedagogy is taken over by a system of rewards, prizes and social progress on the positive side and the system of different responsibilities and sanctions on the negative side. By way of analogy we can say that criminal punishment has the same aim in the case of adults as pedagogical ones in the case of naughty children. *So we can be absolutely right in considering the establishment of criminal responsibility in its contents to be a special pedagogical, criminal-pedagogical process.* The pedagogical type of punishment and the establishment of responsibility is gaining ground nowadays not only in theory but also in practice, in the implementation of the punishment. E.g. in our country they try to adjust the implementation of the punishment of loss of freedom to the pedagogical principles built on the results

of criminal pedagogy. (National office of Implementation of Punishment had elaborated the basic principles of the education of the convicts years ago.)

The last point I wish to explore within this circle is whether the punishment can reach its aim. In the sense that it can contribute and in the case of the application of adequate methods it does contribute to the prevention of crimes, it does reach its aim. There are many people who are withheld from the perpetration of a crime by the process of establishing responsibility and punishment. In the case of a large percent of convicts the punishment has a favourable effect. But even so criminality exists and for a long time it will also exist. The general preventive effect of the punishment cannot prevent some percent of the population from the perpetration of crimes in the present social circumstances and at the present stage of the development of the human consciousness. In the same way punishment has no effect in the case of some convicts, it does not reach its preventive aim. The causes come first and foremost from two sorces. One is not adequate or not sufficient means of punishment, the other and more decisive source in the social structure and level of consciousness. The improvement of the penal system may contribute to the lessening of criminality but it cannot stop it, because there may be other social tendencies inducing it or these tendencies may only slowly loss their criminogenic effect. So the aim of the punishment is the setting of such an aim the realization of which is possible in the case of many people, many convicts, but even the system of the establishment of responsibility and that of punishment that are the most excellent from a theoretical point of view cannot fully realize the aim. But this does not mean that prevention should not be the aim of the punishment. On the contrary, it follows from the nature of the aim that it can be reached through a number of actions, and the aim cannot always be fully reached.

We may meet such opinion in the literature according to which the aim of the punishment cannot be decided generally, but the aims of the punishment can be laid out according to the structure of the perpetrators Tibor *Horváth* writes in view of the heterogenity of the crimes and the perpetrators that "*a)* the realistic aims of the punishment depend greatly on the characteristic features of the types of perpetrators; *b)* general and special prevention as the general aims of the punishment can be reached with education viewing the positive transformation of the personality in some cases and with isolation of detersent character in the case of other types; *c)* the different perpetrator types require different treatment during the implementation of the punishment; *d)* the different aims of punishment and methods of treatment require different penal institutions."[60]

A basic requirement of pedagogy has been formulated here i.e. different persons can be educated in different ways for reaching the same aim. These thoughts prove that preventive aims can be reached in a differentiated system of punishment with individualized penalties. But it does not follow from this that the author laid out in item *a)*, i.e. the

realistic aims of the punishment depend on the characteristic features of the types of perpetrators. According to my opinion *the aims are similar in the case of all punishments, only the means, the methods are different that can lead to this aim.* György *Ádám* also considers it necessary to differentiate among the aims of the punishment according to types of perpetrators. In his opinion educational aims are right in the case of juvenile offenders, but in the case of adults the detrimental character of the punishment must come to he fore. He refers to the fact, that the personality of the child and of the juvenile offender is not fully developed, it must be educated, formed, but the adult person is already independent, he must bear responsibility for his actions in proportion to its gravity. *Ádám* doubts that in the case of adults punishment with educational content may occur at all.[61] In my opinion it is a basic mistake to limit education to childhood. Education, being educated is present all through our life. It is certainly true that the forms of education keep changing. The demands are set by the society to the child and to the adult in different ways. In the same way the forms of judgement, rewarding and establishing responsibility are also different. It is also a fact, that direct intentional education stops with the growing independence of the person, but I think it must be revived not only in the case of young convicts but also in the case of adults, if necessary. What was not fulfined by direct education during childhood or what was destroyed by adult surrounding has to be made up for, corrected during adult age by organized, intentional education.

As intentional education can be understood as the intensive transmission of experiences about human behaviour reached or to be reached and that of invent ideologies, adult convicts must also be subjected to such processes in order to make them law-abiding citizens as soon as possible. It is both an individual and a social investment.

It is clear from waht has been said so far, that the aim of the punishment is prevention. But it is also clear that punishment, the establishment of responsibility cannot ensure the prevention of crime by itself, as criminality is of social origin first and foremost, and the prevention of criminality does not only depend on punishment and the establishment of responsibility but also on other state and social measures. So prevention is not a specific aim of the punishment, as it is not the punishmnt exclusively and not first and foremost that must ensure the prevention of criminality. So although we point out prevention as the aim of the punishment, we must know, that punishment, establishing responsibility with it means only has to contribute to crime prevention. It has become clear during effectivity tests that neither recidivism nor the existence of criminality can be put down to the ineffective quality of the punishment and the establishment of criminal responsibility, as other factors may have a great (sometimes decitive role) in the formation of criminality.[62]

Setting out from this the aim of the punishment in a more precise formulation is that it should contribute with its own means to the prevention of criminality both to the special and general ones.

2. *Principles of punishment*

Penal Codes generally do not lay out the principles of punishment, or do not discuss them is one group.

It is undertsandable in an age when the principle of talion, the principle of punishment proportional to the criminal act can be considered general, and the aim of the punishment is first and foremost retribution. But nowadays when the preventive aim is gaining ground or tends to be the only one accepted, when we can consider the behaviour of the perpetrator as determinated, the principles of punishment reach much further than the principle of proportionality to the act. If we do not agree to everything with the school of social defence or the new social defence, we must take into consideration its principles about punishment and punishing methods the same way we must also consider the results of modern criminological research. The preventive aims of the punishment logically result in certain principles of punishment, to which giving a scientific basis as well as the elaboration of the clements of its contents and form is partly the task of the future. Nowadays we are rather occupied by picking out those principles of punishment from the present ones which cannot be brought into harmony with the principles of a preventive aim.

1. The preventive requirement necessarily excludes all such principles or systems of punishment which only regard "setting the account" for the part and does not look into the future, does not aim at the right determination of the future human behaviour. The punishment with a preventive aim is applied in order to re-socialize or socialize the prepetrator and other citizens. It follows from the principle of determinism, that theoretically 1) all biologically normal persons can be socialized or re-socialized in relation to 2) time and 3) adequate circumstancial determinators. But in reality we often find such perpetrators in the case of whom the applied measures against them did not reach the favourable effect. However, the failure cannot be explained with the uneducability of these people, but the reasons must be found in the back of an inadequateness of one of the above mentioned conditions. The acceptance of this view holds up the posibility for the administration of justice that instead of resigning to the failures one is able to find the reasons of the failure, one is induced to exclude them and through it to improve the system of the administration of justice and the society.

2. It follows from the punishment with a preventive aim, that the punishment cannot contain elements of torture, degrading human dignity, because they encourage the perpetrator to stand up firmly against the administration of justice and social norms, they make the re-socialization process more difficult or even prevent it.

If we recognize the importance of re-socialization, from the point of view of special prevention all such kinds of punishment must be dropped which make re-socialization impossible e.g. capital punishment such fines and nonfiscation of property which put the perpetrator into com-

plete poverty, or such loss of freedom punishments that prevent the perpetrator from having any kind of connection with the society. We have already mentioned that the interest of general prevention may limit the measures brought on the basis of special prevention. But the requirements listed here to which no general presentive interests are attached.

3. The coercive measures, the application of the punishment of loss of freedom are in the rights of all societies, because without this no society can be kept alive. But it is an important requirement that the freedom of the citizens should be limited only in such cases if it is absolutely necessary, if the application of other means would not bring a favourable result. And even in such cases loss of freedom can only be justified only by the danger to the society represented by the act and by the perpetrator himself, and by the necessity of such forced education which is expected to transform the consciousness of the convict.

4. The preventive aim cannot be brought into harmony with such penal systems, such principles of punishment which result or can result in outcasting the perpetrators of the society and branding them for good. The perpetrator is also a human being who can become a useful member of the society actually as a result of the help of the society. The fact that perpetrators are treated with the same feeling of contempt after the execusion of the punishment as at the time of committing the criminal act nowadays can actually be put down to the retributive aim and system of the punishment, when it is not required from the punishment to improve the perpetrator to transform him into a lawabiding citizen. It does not generally belong to the basic tasks of the court and the whole administration of justice to keep a record of what may the consequeces of the punishment be.

A criminal record as an unfavourable label accompanies a part of the perpetrators even after the execution of the punishment. Because the application of the legal detriment in these cases is not finished when the actual punishment is executed, or to put it in another way, more clearly the punishment goes on until the rehabilitation, until gaining a clean record.

Full legal rehabilitation does not mean also the rehabilitation of the colleagues at work and the micro-society. So beside an effective system of punishment it is necessary to change the view of the people to accept the perpetrations after having served their term with more understanding and readiness to keep.

5. Among the principles of punishment perhaps the most discussed one is proportionality. The views widespread today can be very well seen in the work of *Kádár and Kálmán*. "In order to make the punishment right and just the court must apply that punishment within the possible limits defined by the law which corresponds to the characteristic features of the act and the perpetrator. A criminal act is first and foremost one which is dangerous to the society. Danger to the society is not only a basic characteristic feature of a criminal act, but it is also the basis of the punishment of the perpetrator. The degree of the danger to the soci-

ety is the most important indicator showing the gravity of the act. The punishment must be proportioned to the danger to the society of the act, basically it an never be graver than this, and it can be less only if this is made possible by the special features in the character of the perpetrator. It is here that in the socialist criminal law the requirement of the proportionality of the crime and punishment is expressed, this was first laid out as a modern principle by bourgeoisie fighting against feudal criminal law"[63]. The quotation contains two basic ideas. One: The punishment must be in proportion to the crime – apart from some exceptions, two: it is a basic socialist principle although it was laid out by progressive bourgeisie.

The punishment system proportional to the criminal act is criticized nowadays from many sides. Some authors in the Hungarian literature[64] want to give a greater role to the personality of the perpetrator in the course of imposing the punishment. On the other hand others only consider the proportionate punishment as good. E.g. György *Ádám* in one of his articles in the discussion[65] justifies the existence of punishment proportional to the act with the requirement of proportionality present everywhere in the society (e.g. wages proportionate to work). In my opinion in our case we do not speak of proportionality in general, but of *proportionality to the damage or harm caused by the act.* The same way theoretically the punishment may be proportional to the degree of socialization of the person as with the gravity of the criminal act. Reasoning for proportionality in itself is not enough all the more because I have never met anyone in the literature negating proportionality in general. The core of the matter is to what the punishment (or we may mention income as well) should be proportional. The differentiation of proportionality is common in every field of social life. Contrary to the statement of *Ádám* even sharing is not only proportionality to work and even in socialism the yard stick is not only work. The socialist principles are more just than this and as a result of social development they will be even more so, because a large part of the national income is distributed according to the needs of the citizens (social insurance, family allowance etc.). So the socialist state does not realize the "equality of the bourgeoise concept" but it puts into practice its aim "Socialist" ideas of equality step by step. So we cannot agree to the view of *Ádám* explaining the tasks of law among socialist circumstances. "Last of all socialism does not and cannot have any other achievement in the field of law but what has been stated by progressive bourgeoisie has got to be put into practice the real contents of by it. The socialist basis *in law* is never different from putting into practice the principles laid out (but never achieved) by progressive bourgeoisie."[66]

It is a fact that many such principles are put into practice in socialism which were laid out by progressive bourgeoisie. But to reduce the aims, tasks of law among our circumstances only to this would lead to preserving the remnants of capitalism and serining them instead of the further development of the achievements of socialism. In penal procedure

it would mean that the indeterministic views of classical criminal law has to be defended against the deterministic views of materialism and we must change the views for bourgeoise ones. Progressive bourgeoisie built its theory of the establishment of criminal responsibility on the concept of indeterminism, idealism, so it applied a punishment proportional to the criminal act for paying for the past, the criminal act. I'am convinced that socialist criminal law, socialist administration of justice has a higher aim than this one. Taking into consideration the new results in studying the laws of human behaviour *it does not follow from the principle of determinism that punishment proportional to the act must be changed for a system in which punishment is adequate to the personality, but that beside the damages and harm caused by the act also the personality of the perpetrator must be considered together with the possibility of re-socialisation the type and amount of the punishment must be defined with considering general prevention as well.*

Undoubtedly there is some correlation between the gravity of the act and the degree of the danger to the society and antisocial attitudes represented by the perpetrators. So in a certain percent of the cases there will be a correlation between the gravity of the act and the punishment even if we give up the hegemony of the application of the principle of punishment proportional to the criminal offence. In order to avoid misunderstandings I stress it again that *the criminal offence cannot be neglected in the course of imposing the punishment, because that it the starting point of the establishment of ciminal responsibility that is why we apply some measure of punishment against the perpetrator. But what kind of punishment is imposed cannot only be decided on the basis of the gravity of the criminal offences, also the personality of the perpetrator his degree of socialization and the conditions of re-socialization must be taken into consideration with equal or sometimes greater weights.* We can then say, let the punishment be proportional not only to the actions of the past but also the consequences of the favourable determination of the future.

The necessity of the maintenance of the principle of punsihment proportional to the offence is explained by the fact that this is the one that corresponds to the feeling of justice of the population i.e. this is what the population considers to be just. Except for specialist with up-to-date ideas the feeling of justice of the population is really based on punishment imposed on the basis of the gravity of the criminal offence. It became specially evident during recent years when in connection with some grave criminal offences thousands of letters sent to the authorities claimed a "just" punishment (death for death). It is natural because people have heard and read all through their lives that the just punishment is the one that is imposed proportionately to the gravity of the offence. All the more because it is a right of the perpetrator to be able to calculate the consequences of his offence (in days of loss of freedom or in the amount of money).

It does not follow from all this that if we recognize that there is a better, more effective principle from that of the one based on proportionality between the punishment and gravity of the offence, we must stick

to the old one as the population does so. On the contrary the population must be convinced about the deeper truth, they must be taught the laws of human behaviour, the role of the praise and detriment and their essence, then the feeling of justice of the population will also change. The gradual implementation of new principles of punishment make it possible, that the people should not contradict them. It may occur though that the way to the application of the new principles is not quite smooth. This must be taken into consideration because the fight between the old and the new remains a fight even in its weakest form. And in my opinion this fight causes more problems in professional circles than among laymen, as for professionals these leading principles in their everyday work.

6. A further requirement in punishment is that the interests of the perpetrator should be taken into consideration through the interests of that small circle of people to which the perpetrator belongs, if he belongs to one like that at all. As the punishment is a detriment not only for the perpetrator but also for his family and perhaps his working collective. It is hardly possible to elaborate such a penal system that would not be detrimental to the family in general, especially if the convict is a parent. The loss of income parental supervision and care, the shame attached to the conviction of the present are all such detriments that generally effect the innocent, too. In such cases the question whether the conviction is just, is really justified. Undoubtedly the criminal punishment often influences the family of the convict sometimes even their future prospects in a detrimental way.

But in my opinion this is not first and foremost a question of the punishment but it is a problem of the general official social judgement attached to the punishment and the convict. Unjust ethical consempt towards the relations of the convict as well as and the isolation the breaking up of earlier connections going together with it is often a consequence. It follows from social coexistence that one is not only responsible for his own deeds but bears some kind of responibility also for the collective he belongs to. So this ethical contempt is just in proportion to such responsibility, but only to such an extent. Among our circumstances the requirement of proportionality is not made quite clear and it has not yet become part of common conviction of the people. So the punishment may often have unjust consequences for some relations. E.g. a young child cannot be made responsible for the criminal behaviour of its father or mother. So the society must strive that the negative behaviour of the presents should not be drawback for the child. In my opinion we can make a step forward here with the change of social prejudice, the way of thinking of the people and with more effective organized social measures. But the unjust detriment towards the relations and the collective is unavoidable in certain cases and to a certain extent. So the knowledge of this can improve the adaption to social requirement and the mutual feeling of responsibility in the family and in the collective.

A part of the above mentioned principles of punishment can be found among the slogans of humanisation of the representatives of prog-

ressive bourgeoise trends.[67] The derivation of the principles of punishment from the principle of humanism in my opinion is scientifically not fully founded. As in the original meaning of humanism it expresses and defends certain rights, interests and dignity of the individual. The principle of materializm together with socialism means much more than that because beside the interests of the individual it also stresses the interests of the collective, i.e. the majority over the individual. So it becomes clear that the basic human rights of the individual are not inherited but they are defined by the interest of the collective. The rights and obligations of single people, individuals depend on the given social system, social organisation and political principles. So also in our society the rights and obligations of the people are derived from the principles of socialism, materialism and determinism, finally from the social reality the laws of development. So the system of punishment and those forms of punishment can be considered to be right which transform the perpetrators according to the interest of the majority recognizing the social development, and which are adequate to form and maintain a right feeling of responsibility in law-abiding citizens.

FOOTNOTES

* A part of the doctoral dissertation accepted in 1975, with some changes.

[1] Magyar Törvénytár (Hungarian Collection of Laws) 1908. p. 835.

[2] Tamás *Földesi:* Az akaratszabadság problémája (The Problem of the Freedom of the Will) Budapest, 1960.

Gyula *Eörsi:* A jogi felelősség alapproblémái, a polgári jogi felelősség. (The Fundamental Problems of Legal Responsibility, Responsibility in Civil Law) Akadémia Kiadó, Bp. 1961.

András *Szabó:* A fiatalkorúak és a büntetőjog (Juveniles and Criminal Law) Közg. és Jogi K. Bp. 1961.

[3] Géza *Tokaji:* Adalékok a bűncselekményfogalom felépítéséhez (Data to the Formation of the Concept of Criminal Offence) Acta Juridics et Politics. Tomus XIX. Szeged, 1972.

László *Viski:* Közlekedési büntetőjog (Traffic Criminal Law) Doctoral dissertation, 1972.

Péter *Szilágyi:* A jogi felelősség fogalma és alapja (The Concept and Basis of Legal Responsibility) Jogtud. közlöny 1974. 6. p.

[4] Imre *Békés:* Gondatlanság a büntetőjogban (Negligence in Criminal Law) Dissertation, 1972. p. 1.

[5] Ma. Ért. Kéziszótár (dictionary) Akadémia, 1972. p. 374.

[6] Endre *Bócz:* Személyiség és felelősség (Personality and Responsibility) p. 68. Lecture prepared for the session of the Criminological Working Team, held in Oct. 1974.

He lays out a similar viewpoint in his dissertation entitled "The Dangerousness of Person to Society in Criminal Law" Bp. 1975. pp. 271–282.

[7] Ágnes *Heller:* Szándéktól a következményig (From Intention to Consequence) Magvető Kiadó 1970. pp. 105–107.

[8] Soviet authors voice a similar view. E.g.

V. P. *Tugarinov:* Licsnosztyi i obscsesztvo, Moszkva, 1965.

G. *Szmirnov:* Szvaboda i otvesztvennoszty licsnosztyi „Kommunyiszt" 1966, No. 14.

[9] N. S. *Leykina:* Licsnosztyi presztupnyika i ugolovnaja otvetsztvennoszty. Leningrad, 1968. p. 25.

[10] *Eörsi:* op. cit. p. 67.

[11] Op. cit.

[12] József *Földvári:* A büntetés tana. (The Penology) Közgazdasági és Jogi Kiadó Bp. 1970. p. 62.

[13] Péter *Szilágyi:* op. cit. p. 281.

[14] *Szilágyi:* op. cit. p. 282.

[15] *Szabó:* op. cit. pp. 246 – 247.

[16] *Viski, Tokaji:* op. cit.

[17] Lajos *Bólya,* Jr.: A büntetőjogi felelősség alapjának kérdései (Questions Connected to the Basis of Legal Responsibility) Jogtudományi Közlöny 1960. n. 12.

[18] György *Ádám:* Determinista koncepció – indeterminált szabadságvesztés? (A Determinist Concept – Indetermined Loss of Freedom) Jogtudományi Közlöny n. 1 – 2. p. 10.

[19] *Békés:* op. cit. pp. 496 – 497.

[20] *Békés:* op. cit. p. 23.

[21] *Tokaji:* op. cit. p. 33.

[22] *Viski:* op. cit. p. 165.

[23] *Viski:* op. cit. p. 165.

[24] Tibor *Lukács:* Büntetőjogi szemléletünk alakulása. Magyar Jog és Külföldi Jogi Szemle (The Formation of Our Concept of Criminal Law) 1970. n. 9. p. 527.

[25] *Bólyai:* op. cit. pp. 656 – 657.

[26] *Bólyai:* op. cit. p. 656.

[27] *Bólyai:* op. cit. p. 664.

[28] Marc *Ancel:* Le défense sociale nouvelle, Paris, 1966. p. 312 (Editions Cujas)

[29] *Viski:* op. cit. p. 169.

[30] *Földväri:* op. cit. p. 73.

[31] *Földesi:* op. cit. pp. 308 – 309.

[32] *Földesi:* op. cit. p. 310.

[33] *Bólyai:* op. cit. p. 662.

[34] *Eörsi – Tokaji:* op. cit.

[35] *Péter Szilágyi:* A jogi felelősség társadalmi érvényesülése és feltételei (Legal Responsibility as Realised in the Society and its Conditions) Jogtudományi Közlöny, 1974.

[36] E. g. M. D. *Shargorodsky:* Punishment in Criminal Law (Hungarian Translation) I – II. Közgazdasági és Jogi Kiadó 1960.

József *Földvári:* op. cit. (The Study of Punishment) 1970.

[37] According to the Bulgarian Penal Code of 1968. "The aim of the punishment first and foremost is to improve and re-educate the convict together with a presentive educational effect to other members of the society. Punishment is not an act of revenge aiming at the branding and degrading of the perpetrator. Punishment and other educational measures have the special task to educate the perpetrator by state and social influences and to prepare him to socially useful honourable work." (Socialistitschesko Pravo, 1968. No. 4. p. 6.)

The Penal Code of the German Democratic Republic of 1968 States that the aim of the punishment is "to protect the socialist social order, the citizens and their rights from the criminal activity, to prevent criminal offences and to educate the perpetrators effectively in the spirit of keeping the discipline of the state, and a conscious, responsible behaviour existed in all fields of social life. (an 2. par. 1.)

[38] According to the Penal Code of the USSR from 1958 "the punishment is not only a retribution for the crime committed, but its aim is also to improve and re-educate the convicts so that their relationship to work becomes honourable and they abide by the law, in the spirit of socialist coexistence; to prevent other crimes committed both by the convict and other poeple (Art. 20.)

[39] M. D. *Shargorodsky:* Nakazányije, jevo celi i effektivnoszty. Izdatyelsztvo Leningradszkovo Unyiverszityets, 1973.

[40] The Penal Code of the Hungarian People's Republic. Közgazdasági és Jogi Kiadó, Bp. 1962.

[41] op. cit. p. 22.

[42] A Büntető Törvénykönyv kommentárja (Commentary to the Penal Code) I. Bp. 1968. p. 198.

[43] Kálmán *Györgyi:* Büntetési elméletek a német burzsoá büntetőjogban. (Theoris of Punishment in German Bourgeoisie Penal Law) Acta Facultatis Politico-Juridicae Uni-

versitatis Scientiarum Budapestiensis de Rolando Eötvös Nominatae. Tomus XV. ELTE Állam- és Jogtudományi Kar, Bp. 1973.

[44] Miklós *Kádár* – Kálmán *György:* A büntetőjog általános tanai. (General Doctrines of Penal Law) Közgazdasági és Jogi Könyvkiadó, Bp. 1966. p. 667.

[45] Op. cit. p. 668.

[46] Dénes *Bagi:* Büntetési rendszerünk és a büntetéskiszabás egyes kérdéseiről (Our Penal System and Our Some Issues of Imposing the Punishment) Magyar Jog és Külföldi Jogi Szemle, 1978. n. 6. p. 329.

[47] *Földvári:* op. cit. pp. 45 – 47.

[48] *Szabó:* op. cit. p. 261.

[49] *Viski:* op. cit. (dissertation) pp. 320 – 323.

[50] Mihály *Ficsor:* A determinizmus szerepe a büntetési célok meghatározásánál ("The Role of Determinism in Defining the Aims of Punishment") Jogtudományi Közlöny, n. 12. p. 673.

[51] M. D. *Shargorodsky:* Nakszenyije, jevo céli i effektivnoszty, Izdatyelsztvo Leningradszkovo Unyiverszityéta, 1973. p. 28.

[52] Reported by *Shargorodsky:* op. cit.

[53] *Viski:* dissertation p. 320.

[54] More modern and more effective handling of multiple recidivista. Discussion in the Criminological Work Team of the E.L. University of Bp. 26th Febr. 1971. Bp. 1972. p. 32.

[55] Károly *Edvi Illés:* A Büntető Törvénykönyv magyarázata (The Commentary of the Penal Code), Révai-testvérek kiadása, Bp. 1894. v. I. pp. 78 – 79.

[56] *Shargorodsky:* op. cit. p. 31.

[57] I. I. *Karpec:* Nakazanyije, szocialnije pravovije kriminologicseszkije problemi Jurigyicseszkaja Litycratura, Moszkva, 1973. Ch. IV. Art 3.

[58] Nigel *Walker:* Sentencing in a Rational Society. Allon Lane The Pinguin Press, London, 1969. p. 66.

[59] M. *Ancel:* op. cit. p. 345.

[60] Tibor *Horváth:* Gondolatok büntetéstani problémáinkhoz (Some Thoughts our Doctrines of Punishment) n. 5. Magyar Jog és Külföldi Jogi Szemle 1971.

[61] György *Ádám:* Visszaeső bűnözők – visszaeső büntetőjog ("Recidivists – Recidivist Criminal Law") Magyar Jog és Külföldi Jogi Szemle, 1973. n. 9.

[62] József *Vigh* – István *Tauber:* A szabadságvesztés büntetési hatékonyságának főbb jellemzői ("The Most Important Characteristic Features of the Effectivity of Loss of Freedom Punishment") Jogtudományi Közlöny, 1976. n. 11.

[63] *Kádár – Kálmán:* op. cit. p. 783.

[64] Gyula *Gárdai* – József *Vigh:* Észrevételek büntetési rendszerünk problémáihoz ("Remarks on the Problems of Our System of Punishment") Magyar Jog és Külföldi Jogi Szemle, 1969. n. 10.

[65] *Ádám:* op. cit.

[66] Op. cit. p. 549.

[67] M. *Ancel:* op. cit.

КОНЦЕПЦИЯ ДЕТЕРМИНИЗМА И УГОЛОВНОЕ ПРИВЛЕЧЕНИЕ К ОТВЕТСТВЕННОСТИ

Проф. д-р ЙОЖЕФ ВИГ

По автору, ответственность это отношение индивида и общества или членов общества. Содержание ответственности заключается в какой-то обязанности индивида, которую он может реализовать с ответствием или опасно на общество, встречаясь с уголовными нормами.

Против общего понимания статья говорит что привлечение к ответственности может наступать в обоих случаях. Из первого случая может следоваться признание, похвалы быть может награждение, а из второго случая неодобрение, принуждение,

наказание. Значит, уголовная ответственность и уголовное привлечение к ответственности не тождественны. Первая может существовать и без второго.

Исходя из концепции детерминизма, цель уголовного привлечения к ответственности может только превенция. Итак, на совершителя преступления нужно назначить или применять наказание или меру наказания подходящие для осуществления и генеральной и специальной превенции. В таком понимании наказание это средство детерминации будущего подходящего поведения людей и осужденных.

Каждые формы наказания и всю уголовную систему нужно оценить с точки зрения их применимости к обеспечению или способствованию их осуществлению.

Вот так связываются на основе концепции детерминизма действия прошедшего, возможности и возможные события будущего.

DIE DETERMINISTISCHE KONZEPTION UND DIE STRAFRECHTLICHE VERANTWORTLICHMACHUNG

DR. JÓZSEF VIGH
Universitätsprofessor

(Zusammenfassung)

Der Meinung des Verfassers nach ist die Verantwortung ein, zwischen dem Individum und der Gesellschaft oder deren Mitglieder bestehendes Verhältnis. Ihr Inhalt ist irgendeine Verpflichtung der Einzelperson der sie auf eine verantwortungsvolle oder unverantwortliche Weise, gegen die Strafnormen verstossend, auf eine gesellschaftsgefährliche Art nachkommen kann. Abweichend von der allgemeinen Auffassung kann es – laut der Studie – in beiden Fällen zur Verantwortlichmachung kommen. Im ersten Fall kann die Folge die Anerkennung, die Belobung, eventuell die Belohnung sein, wobei im zweiten Fall etwa die Missbilligung, die Verurteilung, die Strafe. Die strafrechtliche Verantwortung ist also nicht mit der strafrechtlichen Verantwortlichmachung identisch. Die erstere kann auch ohne der lezteren bestehen.

Das Ziel der strafrechtlichen Verantwortlichmachung kann, ausgehend von der deterministischen Konzeption, nur die Prevention sein. Daraus folgt, dass nur solche Strafe oder Strafregeln dem Täter auferlegt werden dürfen, die gleicherweise die generelle und auch die spezielle Prevention sichern. In diesem Sinne sei die Strafe nichts anderes, als ein Mittel für die Determinierung der richtigen Verhaltensweise der Menschen, für das zukünftige richtige Verhalten der Verurteilten.

Jede einzelne Strafart, aber auch das ganze Strafsystem muss von dem Gesichtspunkt bewertet werden, wieweit sie zur Sicherung der preventiven Ziele oder zur Förderung ihrer Durchsetzung geeignet sind.

So verknüpfen sich die Ereignissen der Vergangenheit, auf Grund der deterministischen Konzeption, mit den Möglichkeiten der Zukunft, mit ihren mutmasslichen Ereignissen.